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17 CITY HEALTHCARE DISTRICT and  
18 Counterclaimant TRI-CITY HEALTHCARE  
19 DISTRICT

12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 ALLEN COLEMAN, SUELLYN ELLERBE,  
15 DAN GROSZKRUGER, TERRY HOWELL,  
16 ONDREA LABELLA, DOREEN  
17 SANDERSON, and ROBERT WARDWELL,

18 Plaintiffs,

19 vs.

20 KATHLEEN STERLING, ROSEMARIE  
21 RENO, CHARLENE ANDERSON, GEORGE  
22 COULTER, LARRY ANDERSON,  
23 TRI-CITY HEALTHCARE DISTRICT, and  
24 DOES 1 through 100, inclusive,

25 Defendants.

26 TRI-CITY HEALTHCARE DISTRICT,

27 Counterclaimant,

28 vs.

29 ALLEN COLEMAN, SUELLYN ELLERBE,  
30 DAN GROSZKRUGER, TERRY HOWELL,  
31 ONDREA LABELLA, DOREEN  
32 SANDERSON, ROBERT WARDWELL, and  
33 ROES 1 through 50, inclusive,

34 Counterdefendants.

CASE NO. 3:09-cv-01594-W-BGS

**DEFENDANTS'/COUNTERCLAIMANT'S  
NOTICE OF MOTION AND MOTION  
FOR CERTIFICATION OF  
INTERLOCUTORY APPEAL PURSUANT  
TO 28 U.S.C. § 1292(b)**

**[NO ORAL ARGUMENT PURSUANT TO  
CIVIL LOCAL RULE]**

**Date: February 13, 2012**

PLEASE TAKE NOTICE that on February 13, 2012, or a date sooner to be determined by the Court, Defendants Rosemarie Reno, Charlene Anderson, George Coulter, Larry Anderson, and Defendant/Counterclaimant Tri-City Health Care District (collectively, "District Defendants") hereby move, pursuant to 28 U.S.C. § 1292(b), for certification of interlocutory appeal of the Court's Order of November 28, 2011 (Docket No. 174) and for an immediate stay of the November 28, 2011 Order pending appeal in the Order.

This motion is supported by the accompanying memorandum of points and authorities. The controlling issue is whether the privileged communications have been vitiated due to the crime-fraud exception. Substantial grounds for disagreement exist on at least three issues: (1) whether the subject matter of an attorney's advice must be related to and in furtherance of the alleged crime that forms the basis for the crime-fraud exception, (2) whether Defendants made a mistake of fact regarding Coulter's election to the Board and whether that mistake negates the specific intent necessary for the crime of violating the Brown Act, and (3) whether the existence of directors-elect, who have not yet assumed the duties of their office during a period between the date of their election and their assumption of those duties, affects how many members of a legislative body are calculated in order to form the majority of such members that are required to constitute a "meeting" under the Brown Act. Additionally, review now will materially advance the litigation, because it will minimize risk of reversible error and prevent potentially unnecessary and inappropriate discovery.

Defendants seek the opportunity to plead their cause now to the appellate court, before privileged communications are divulged. Therefore, an immediate stay of the Order is necessary.

DATED: December 16, 2011

HOOPER, LUNDY & BOOKMAN, P.C.

By: /s/ Joseph R. LaMagna

JAY N. HARTZ

JOSEPH R. LAMAGNA

Attorneys for Defendants ROSEMARIE RENO,  
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DISTRICT and  
Counterclaimant TRI-CITY HEALTHCARE  
DISTRICT

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Diego, State of California. My business address is 101 W. Broadway, Suite 1200, San Diego, California 92101-3890.

On December 16, 2011, I served true copies of the following document(s) described as **DEFENDANTS'/COUNTERCLAIMANT'S NOTICE OF MOTION AND MOTION FOR CERTIFICATION OF INTERLOCUTORY APPEAL PURSUANT TO 28 U.S.C. § 1292(B)** on the interested parties in this action as follows:

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**BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on December 16, 2011, at San Diego, California.

/s/ Joseph R. LaMagna  
JOSEPH R. LAMAGNA

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